

ET



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,326	10/03/2002	Steven Curtis Zicker	7017	9314
49144	7590	06/16/2005		
HARNESS, DICKEY & PIERCE, P.L.C. 7700 BONHOMME SUITE 400 ST LOUIS, MO 63105			EXAMINER KIM, JENNIFER M	
			ART UNIT 1617	PAPER NUMBER

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,326

Applicant(s)

ZICKER ET AL.

Examiner

Jennifer Kim

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/7/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The amendment filed April 7, 2005 have been received and entered into the application.

Action Summary

The rejection of claims 1, 2, 5 and 6^{and 9-11} under 35 U.S.C. 102(e) as being anticipated by Davenport et al. (WO 2004/006688A1) is being maintained for the reasons stated in the previous office Action and modified version to include new limitation are presented in this Office Action.

The rejection of claims 3, 4 and 7 under 35 U.S.C. 103(a) as being unpatentable over Davenport (WO 2004/006688A1) is being maintained for the reasons stated in the previous office Action and modified version to include new limitation are presented in this Office Action.

Response to Arguments

Applicants' arguments filed on April 7, 2005 have been fully considered but they are not persuasive. Applicants' argue that Davenport et al. describes diets containing a "high amount" of DHA and EPA, Davenport et al. do not describe any diet containing at least about 0.5% by weight of an omega-3 fatty acid or omega-3 fatty acid mixture as

Art Unit: 1617

required by amended claim 1. This is not persuasive because Davenport teaches the diet can be formulated with 0.25% of DHA and 0.25% of EPA (total omega-3 fatty acid content 0.5%). (page 8, first and second full paragraph). Therefore, given the broadest interpretation of claimed subject matter, this teaching clearly encompasses Applicants' claimed limitation of at least about 0.5% content of omega-3 fatty acids set forth in claim 1. Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

((e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 6 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Davenport et al. (WO 2004/006688A1) of record.

Art Unit: 1617

Davenport teaches a method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (preferred omega-3 fatty acids utilized by the Applicants, page 2 [0007] of instant specification). (page 4, lines 5-8, page 8, lines 3-17, page 10, line 3). Davenport teaches the diet can be formulated as to be dry (e.g. in kibble or other form) (dry matter). (page 6, last full-paragraph). Davenport teaches the diet can be formulated with 0.25% of DHA and 0.25% of EPA. (page 8, first and second full paragraph).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davenport (WO 2004/006688A1) of record.

Davenport teaches a method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (omega-3 fatty acids). (page 4, lines 5-8, page 8, lines 3-17, page 10, line 3). Davenport teaches the emotional reactivity and behavior of dogs is thought to be influenced by the specific content of their food. (page 2, 2nd paragraph).

Art Unit: 1617

Davenport teaches the diet can be formulated as to be dry (e.g. in kibble or other form) (dry matter). (page 6, last full-paragraph). Davenport teaches the diet can be formulated with 0.25% of DHA and 0.25% of EPA. (page 8, first and second full paragraph).

Davenport does not teach the specified age of the dog set forth in claims 3, 4 and 7.

It would have been obvious to one of ordinary skill in the art to employ the high quality diet containing DHA and EPA taught by Davenport to a dog of any age since Davenport teaches the diet containing DHA and EPA is effective in behavior control of any healthy dog. One would have been motivated to make such modification in order to achieve moderated behavior by the specific content of food comprising DHA and EPA to all healthy dogs as taught by Davenport.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 1617

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

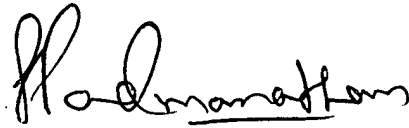
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/065,326

Page 7

Art Unit: 1617

A handwritten signature in black ink, appearing to read "S. Padmanabhan", with a horizontal line drawn underneath the name.

Sreenivasan Padmanabhan
Supervisory Examiner
Art Unit 1617

Jmk
June 6, 2005